**HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI**
**AND**
**HON'BLE Ms. JUSTICE G. ROHINI**

**Writ Appeal No.703 of 2007**

**Between :**

1. The Sub-Registrar, Jaggampeta,
   East Godavari District & another. … Appellants

**And**

Kotta Narayana Murthy .. Respondent

**:: J U D G M E N T ::**

Counsel for the appellants : GP for Revenue (General) (A&R)

Counsel for the respondent : Shri A.K. Kishore Reddy

**October 22, 2007**

**Per G. ROHINI, J**

The petitioners in Writ Petition No.21701 of 2006 preferred this Appeal against the order dated 5.6.2007 whereunder the learned Single Judge while allowing the Writ Petition, set aside the order of the District Registrar-cum-Collector under the Indian Stamp Act, 1899, Kakinada.

The facts, in brief, are as under :

The writ petitioner (respondent herein) along with his family members executed a Partition Deed dated 07.02.2004 dividing certain properties among themselves. A sum of Rs.57,030/- was paid towards stamp duty on the said document under Article 40 of Schedule I-A of the Indian Stamp Act, 1899 (for short, 'the Act') and the same was presented before Sub-Registrar, Jaggampet for registration. However, treating the said document as a settlement deed, the Sub-Registrar, Jaggampet impounded the same and referred to the District Registrar-cum-Collector under the Act for adjudication. Pursuant thereto, the District Registrar while holding that the document was chargeable with a stamp duty of Rs.6,95,100/- under Article 49-A(b) of Schedule I-A of Indian Stamp Act, 1899, issued a notice dated 15.5.2004 calling upon the writ petitioner and other executants of the document as to why the deficit stamp duty and penalty should not be collected from them. The writ petitioner submitted a representation denying their liability to pay the deficit stamp duty demanded under the notice dated 15.5.2004. However, without accepting the said objections, the District Registrar-cum-Collector, in exercise of power conferred under Section 40 (2) of the Indian Stamp Act passed an order dated 28.9.2004 holding that the writ petitioner and other parties to the document were

liable to pay a sum of Rs.6,38,070/- in addition to Rs.57,030/- already paid on the document. The said order was challenged in Writ Petition No.21701 of 2006. After hearing both the parties, the learned Single Judge by order dated 05.06.2007 allowed the writ petition and set aside the order dated 28.9.2004 observing as under :

> "In the order passed by him, the second respondent did not discuss the objections raised by the petitioner. The only sentence that dealt with the objections read as under :
>
> *"But the objections raised by the party in the reference 2nd cited are not tenable"*
>
> He did not even mention the provision, under which he passed the order."

Aggrieved by the same, this appeal has been preferred under Article 15 of the Letters Patent by the respondents in Writ Petition No.21701 of 2006 contending *inter alia* that since the document in question was a settlement deed chargeable with the stamp duty under Article 49-A (b) of Schedule I-A of the Indian Stamp Act, the determination made in the order dated 28.9.2004 was in accordance with law and did not suffer from any infirmity.

It is further contended that whereas the document in question was yet to be admitted for registration, the learned Single Judge having proceeded on an erroneous assumption that the document was already registered and released to the petitioner, allowed the writ petition holding that the whole exercise was contrary to the provisions of the Act.

Having heard learned Counsel for both the parties and having perused the material on record, we found that the observation of the learned Single Judge in page-4 of the order under appeal that "***the document was ultimately registered and released to the petitioner***" is factually incorrect. The same has not been disputed by the learned counsel for the respondent/writ petitioner.

However, the learned Single Judge cannot be held to have committed any error in setting aside the order dated 28.9.2004,

impugned in the writ petition, since on the face of it the said order was devoid of reasons.

It is to be noted that in the show cause notice dated 15.5.2004 the petitioner and other executants of the document were called upon to show cause as to why deficit stamp duty and penalty should not be levied on the ground that the document in question is chargeable with stamp duty under Article 49-A(b) of Schedule I-A of the Indian Stamp Act, 1899.

The petitioner submitted a detailed explanation as under :

> "We are not in a position to understand as to how Rs.6,95,100/- is arrived at as shown in the show cause notice. The said notice is not clear and un-understandable. It is vague. We may be appraised on what basis, the said amount was calculated on a partition deed falling under Article 40. Even if the document is treated as Settlement Deed falling under Art. 49(A)(a) the stamp duty payable is the same. The document does not fall under Article 49(A)(a) as the document in question is not a settlement deed between members of different families. In the instant case, the document was between father, son and the wife of a deceased son and children. Hence even if it is treated as Settlement falling under Art. 49(A) (a) as it is between the members of a same family, the stamp duty payable is 3% as the Bottomary Bond under Article 14 of Schedule I-A.
>
> It appears you have arrived at the figure of Rs.6,95,100/- on the basis that it is a Settlement between different families and not falling under explanation to Art.49(A) (a). This is factually incorrect.
>
> Even if the document is treated as a Settlement Deed, it falls under Article 49(A)(a) in as much as the executants of the document are the members of the same family.
>
> Article 49(A)(b) is not applicable. It is only a partition deed falling under Article 40 of Schedule I-A. It is therefore, prayed that the notice under reference may be cancelled or dropped."

Strangely, without referring to any of the said objections and without assigning any reasons for not accepting the specific case of the petitioner that Article 49-A (a) or (b) of Schedule I-A of the Act is not applicable, the District Registrar passed the order dated 28.9.2004 holding that the writ petitioner was liable to pay the deficit stamp duty of Rs.6,95,100/-.

The law is well settled that absence of reasons is one of the grounds for judicial review under Article 226 of Constitution of India since the failure to assign reasons would result in violation of principles of natural justice. Hence, the learned Single Judge was justified in setting aside the order dated 28.9.2004.

However, we are of the opinion that having set aside the order dated 28.9.2004, the learned Single Judge ought to have left it open to the 2nd respondent, who is the competent authority under Section 40 of the Act, to consider the objections raised by the writ petitioner and pass appropriate orders in accordance with law. Therefore, the order under Appeal requires modification to the said extent.

The Writ Appeal is accordingly allowed. The order of the learned Single Judge is modified and it is directed that the competent authority shall pass fresh order within three months after considering the objections already filed and fresh objections that may be filed by the petitioner within fifteen days from today. No costs.

It is made clear that this Court shall not be understood to have expressed any opinion as to the nature of the document in question and the competent authority shall pass appropriate orders independently without having regard to the observations made in this judgment or the order in Writ Petition No.21701 of 2006.

**G.S. SINGHVI, CJ**

**G. ROHINI, J**

October 22, 2007
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